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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,795	08/08/2005	Hugo De Vries	5100-000011/US	6854

30593 7590 02/08/2011

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EXAMINER	
DENNIS, MICHAEL DAVID	
ART UNIT	PAPER NUMBER
3711	
MAIL DATE	DELIVERY MODE
02/08/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/522,795	DE VRIES ET AL.	
	Examiner	Art Unit	
	MICHAEL D. DENNIS	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 January 2011*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *15,18,22,23,25 and 28-30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *15,18, 22-23, 25, 28-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This action is made Non-final in response to applicants Request for Continued Examination filed 1/12/2011. Claim 15 is amended; claims 28-30 are new; claims 15, 18, 22-23, 25 and 28-30 are pending.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 15, 18, 22, and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Magnuson et al. in view of Muldner.

As per claims 15, 28-30, Magnuson et al. discloses a playable surface, comprising a relatively hard flat substrate 13, at least one layer arranged thereon of a resilient and/or damping material 11 and a top layer 10 arranged in turn thereon, wherein permanent air chambers are formed in the relatively hard substrate and/or the

layer of resilient and/or damping material (column 3, lines 14-26). Figures 1 and 4 discloses the layer of a resilient and/or damping material 11 forms air chambers during or after arranging the layer because the air chambers are defined by the contours of the resilient and/or damping material 11 and profiled mat 15. It is noted that product-by-process claims are not limited to the manipulations of the recited steps, only the structure implied by the steps (Fig.'s 3-4). See MPEP 2113. Magnuson et al. further discloses wherein a profiled mat 12 is arranged between the relatively hard substrate and the layer of resilient and /or damping material and over which the resilient and/or damping material is spread, and wherein the air chambers are defined by the profile of the mat (column 3, lines 14-26) and take the form of recesses in the lower part of the at least one layer of resilient and/or damping material (Fig. 1) (in between numerals 11 and 12).

Magnuson et al. does not disclose wherein the mat is biodegradable; however, Muldner discloses wherein such features as a biodegradable mat are known in the art (Abstract). Hence, at the time of invention, one having ordinary skill in the art would have found it obvious to use biodegradable materials for environmental purposes. Moreover, the selection of a known material based on its suitability for its intended use supported a prima facie obviousness determination in *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945) per MPEP 2144.07.

As per claim 18, the recesses shown in Fig. 1 (in between numerals 11 and 12) are construed to be permanent air chambers. It is noted that product-by-process claims

are not limited to the manipulations of the recited steps, only the structure implied by the steps (Fig.'s 3-4). See MPEP 2113.

As per claim 22, Fig. 1 of Magnuson et al. shows artificial turf as the top layer.

As per claims 29-30, the air chambers are above a top surface of the hard substrate (Fig. 4), and vertically project from a top surface of the hard substrate.

4. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Magnuson et al. in view of Muldner and further in view of Friedrich.

As per claim 25, Magnuson et al. does not disclose wherein heating wires are received in the mat; however, Friedrich discloses that such features as placing an electrical cable heating means below a playing surface in well known in the art (column 7, lines 1-25). Relocating the receiving portion of the heating wires to a mat portion does not substantiate the feature. Hence, at the time of invention, one of ordinary skill in the art would have found it obvious to modify the playable surface discloses by Magnuson et al. with an electrical heating means as taught by Friedrich, as both Magnuson et al. and Friedrich are directed towards playable surfaces. The motivation to combine references is to provide a field capable of withstanding harsh weather elements (column 3, lines 27-30).

5. Claims 18 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Magnuson et al. in view of Muldner and further in view of Garcia.

As per claims 18 and 23, Garcia discloses wherein such features as permanent air chambers are formed from an air supply 26 to generate air circulation (column 2).

Hence, at the time of invention, one having ordinary skill in the art would have found it obvious to use an air supply device to provide cushioning support.

Response to Arguments

6. Applicant's arguments filed 1/12/11 have been fully considered but they are not persuasive. Applicant argues wherein the relatively hard substrate is not flat. Examiner disagrees. Per MPEP 2111, the Federal Circuit's *en banc* decision in *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005) expressly recognized that the USPTO employs the "broadest reasonable interpretation" standard: The Patent and Trademark Office ("PTO") determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction "in light of the specification as it would be interpreted by one of ordinary skill in the art." In the instant case, the hard substrate 13 is construed to be relatively flat because it is not inclined/sloped. Furthermore, the air chambers defined by the resilient material 11 are further defined by the profiled mat (Fig. 4), and are therefore not embedded in the hard substrate.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL D. DENNIS whose telephone number is (571)270-3538. The examiner can normally be reached on 8:00 - 6:00 (off every other Fri.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene L. Kim can be reached on (571) 272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MD
2/4/11

/Gene Kim/

Supervisory Patent Examiner, Art Unit 3711